




OFFICE OF THE COUNTY EXECUTIVE  
ROCKVILLE, MARYLAND 20850

Isiah Leggett  
County Executive

**MEMORANDUM**

November 8, 2011

TO: Valerie Ervin, President  
County Council

FROM: Isiah Leggett, County Executive 

SUBJECT: Bill 25-11, Offenses – Curfew

I am writing to request your assistance in obtaining Council action on Bill 25-11, Offenses – Curfew (curfew bill) before the December recess. As a matter of fairness, it is time for the Council to vote on this bill.

The curfew bill was introduced on July 13, 2011 and was the subject of a lengthy 2 ½-hour public hearing on July 26. After listening to public hearing testimony and other community feedback, I forwarded my recommended amendments to Council on August 31. In response to 21 questions posed by Council staff about the bill, I submitted a 35-page memorandum to Council on September 13. The Public Safety Committee (Committee) has held two exhaustive worksessions on the bill – the first on September 15 and the second on November 3. Both worksessions lasted more than 2 ½ hours.

Despite these comprehensive deliberations, the Committee has not yet voted on any amendments to the curfew bill or the bill itself. In this regard it is important to note that there are hundreds of curfew laws on the books throughout the United States. Montgomery County would not be reinventing the wheel if it adopts a curfew law. It would be following in the footsteps of more than 500 jurisdictions around the country. It is time for the Committee to either expeditiously schedule a worksession for action or move the bill to the full Council.

We were previously advised that the delay in scheduling the second Committee worksession on the curfew bill, which was held seven weeks after the first Committee worksession, was caused by Council's desire to seek input on the bill at its Youth Town Hall on October 12. We are now being told that the Committee's action on the curfew bill will be delayed because of the introduction of Bill 35-11, Offenses - Loitering or Prowling (loitering bill).

Its time to recognize the introduction of the loitering bill for what it really is – a stall tactic intended to confuse the debate on the curfew bill and delay action on the curfew bill. The loitering bill is constitutionally questionable and practically unenforceable, given its vague provisions. The lead sponsor's real purpose for the loitering bill is to provide an excuse to delay action on the curfew bill. Even if the loitering bill never goes anywhere and withers on the vine at Council, it is nonetheless serving its intended purpose: to deny Councilmembers who support the curfew bill their rightful opportunity to vote on it.

Why else would an idea that was unanimously rejected by the Council in 2006 be resurrected with a slightly new twist in 2011? In 2006, the Council repealed the County's loitering law because there was a concern that the law did not "provide a person of ordinary intelligence adequate notice of what conduct is forbidden in the statute."<sup>1</sup> After citing concerns about the constitutionality of the loitering law, the Council deleted the term "loitering" from the County Code altogether and substituted concrete language that prohibited disorderly conduct.<sup>2</sup> Councilmember Andrews noted at the time that "loitering in and of itself . . . should not be considered a crime".<sup>3</sup>

Although County Attorney Marc Hansen has not yet completed his analysis of the constitutionality of the loitering bill, he stated last week during the Committee's worksession on the curfew bill that, at best, the loitering bill is on the cusp of constitutionality and would subject the County to significant risk of liability for false imprisonment, false arrest, and civil rights violations.

While the loitering bill is modeled after provisions of the Model Penal Code that have existed for almost 50 years, it has only been adopted in seven states. In four of those states, the courts have invalidated the loitering laws as unconstitutional. In contrast, there are hundreds of curfew laws on the books throughout the United States and they have repeatedly been upheld as constitutional.

The loitering bill does nothing to address the vulnerability of our County that exists simply because youth curfews in neighboring Prince George's County and the District of Columbia drive youth to visit Montgomery County late at night because there is no curfew law here. The loitering bill does nothing to reduce the number of minors who are out late at night and at risk of becoming involved in criminal activity or the victims of criminal activity. There is no authority under the loitering bill for police officers to direct minors to go home if they are out late at night. The loitering bill does nothing to support parental responsibility for children. In sum, there is simply no logical relationship between the loitering and curfew bills.

Police Chief Thomas Manger has asked the Council to adopt the curfew bill because it will provide law enforcement personnel with a valuable tool for dealing with nighttime crime. In contrast, he has questioned the value of the loitering law and expressed serious concerns about its

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<sup>1</sup> See Legislative Request Report for Bill 15-06, Offenses - Loitering.

<sup>2</sup> See Council Staff Packet for Bill 15-06, Offenses – Loitering on July 11, 2006.

<sup>3</sup> See Minutes from the July 11, 2006 Council Session.

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enforceability. Why would Council second guess the professional judgment of our highest law enforcement officer as to which law would provide a useful tool for enhancing public safety?

It is time for the Committee to vote on the curfew bill and to move it forward to the full Council. I would appreciate your help in making this happen and offer my assistance in any way that you think would be constructive.

c: Thomas Manger, Police Chief  
Marc Hansen, County Attorney